



Joseph C. Sullivan  
Mayor

# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

### Meeting Minutes

**December 17, 2008**

**IN ATTENDANCE:**

Stephen Karll, Chairman  
Jack Gauthier, Member  
Michelle Lauria, Member

**ALSO PRESENT:**

Russell Forsberg, Inspector of Buildings/Code Compliance Officer  
Carolyn Murray, Town Solicitor

**Mr. Karll called the meeting to order at 7:04pm.**

**NEW PETITIONS:**

- 1) **Petition Number 08-45**  
**Lee Cofran**  
**RE: 49 Partridge Hill Road**

Present: Lee Cofran, applicant

The petitioner, Lee Cofran, of 49 Partridge Hill Road, seeks relief from the Zoning By-laws, Chapter 135, Sections 403, 407, and 701 relative to the same property. The petitioner is seeking permission to demolish an existing dwelling and construct a new dwelling with an in-law apartment. The property is located in a Residence A Zoning District, as shown on Assessors' Map No. 2090, Plot 17, and contains 18, 049 SF +/- of land.

### **NOTICE**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on December 17, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on the petition was chairman, Stephen Karll, and members, Jack Gauthier and Michelle Lauria.

### **EVIDENCE**

The petitioner, representing himself, explained to the Board that he is seeking permission to raze the existing dwelling on this site in order to construct a single family home with an attached in-law apartment. The lot is pre-existing nonconforming, offering 18,049 SF, where the minimum lot size under the Zoning By-law is 25,000 SF, and providing only 98 feet of lot width, where the Zoning By-law requires a minimum lot width of

100 feet. The existing dwelling is conforming as to all setbacks, but the proposed dwelling will encroach into the front yard setback. This is a corner lot, abutting an undeveloped paper street noted as a "future road" on the plan submitted and as a corner lot, the front yard setback is 20 feet, yet, the proposed dwelling will be located 13.5 ft. to 15.9 ft. off the front lot line. The petitioner explained that the new dwelling is a pre-fabricated house, which comes in a standard size of approximately 27 ft. x 27 ft., and therefore, he cannot alter the dimensions to make the house conform to the setbacks.

As grounds for a hardship, the petitioner noted the uniqueness of the lot, located on a corner lot with a paper street forming the other corner. If not for the paper street, the petitioner's lot would not be deemed a corner lot, and thus would conform to the side yard setback requirements. The petitioner also noted that the lot is unusual in shape, as the corner of the lot in issue is curved.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts," dated November 15, 2008, prepared by C.S. Kelley, PLS of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0, the Planning Board voted to take no action on this petition based on a proposal submitted by the petitioner in October, 2008.

### **FINDINGS**

The Board found that the petitioner had presented a hardship owing to the curved shape of the lot and the unique placement of the "corner" lot along an undeveloped paper street that affects only the petitioner's property and does not impact the zoning district generally. The Board also found that the relief could be granted without detriment to the neighborhood and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **DECISION**

On a motion made by Mr. Gauthier and seconded by Ms. Lauria, the Board voted unanimously to approve the relief requested, subject to the plan submitted.

#### **2) Petition Number 08-54 Paul Charrette, Jr. RE: 43 Sampson Street**

Present: Paul Charrette, Jr., applicant.

This is a petition filed by Paul Charrette, Jr. of 43 Sampson Street regarding the same property. The petitioner seeks relief from the Zoning By-laws Chapter 135, Sections 403, 407, and 701 in order to build an addition to the rear of the dwelling and to construct a farmer's porch on the front of the dwelling. The property is located in a Residence B Zoning District as shown on Assessors' Map 2021, Plot 47 and contains 4,709 SF+/- of land

### **NOTICE**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and mailed to parties of interest, a hearing was held before the Zoning Board of Appeals on November 25, 2008 and continued by agreement of the parties to December 17, 2008, at the DPW Administration Building, 90 Pond Street in Braintree, MA. Sitting on the petition at the first hearing was the chairman, Stephen, Karl, members Jack Gauthier and Joseph Mulligan, with Alternate, Jay Nuss. Member Michelle Lauria was also present at the first hearing. At the continued hearing, members Joseph Mulligan and Jay Nuss were absent. Invoking the rule of necessity, Ms. Lauria sat on the petition for the continued hearing, with the consent of the petitioner.

### **EVIDENCE**

The petitioner, representing himself, is seeking permission to alter a pre-existing nonconforming lot and structure. The lot is nonconforming as to area, as it contains only 4,709 SF of land, whereas the Zoning By-law requires 15,000 SF. The lot is also nonconforming as to lot width, containing 55 feet, where 100 feet is required, and is 85 feet deep, where 100 feet is required. The existing dwelling is also nonconforming, as it encroaches into the front yard setback, offering only 12.8 feet of setback, where 20 feet is required, and encroaches into the rear yard setback, offering only 24 feet, where 30 feet is required. The petitioner proposes to construct a farmer's porch on the front of the house that will be located 6.4 feet off the front lot line. The petitioner also proposes to construct a 7 ft. x 16 ft. addition to the rear of the property to enlarge the existing kitchen, and the proposed addition will be located 22.5 feet off the rear lot line. The petitioner seeks variances for the further encroachment into the front and rear yard lot lines.

As grounds for a hardship, the petitioner noted that his lot is extremely undersized, making it difficult for any alteration of the structure to comply with zoning setbacks.

The Board expressed concern with the addition of the farmer's porch, noting that the house was already encroaching into the front yard setback; the addition will further encroach and gives the appearance of the house literally being within the street layout. With the agreement of the petitioners, the Board continued the hearing for the purpose of conducting a site visit.

At the continued hearing on December 17, 2008, the Board reiterated its prior concerns that the farmer's porch would be too close to the street line, more so than other houses in the neighborhood. The petitioners requested to withdraw so much of their petition as it pertains to the farmer's porch.

The petitioner presented a plan entitled "Plot Plan Showing a Proposed Porch and Addition, #43 Sampson Street, Braintree, MA," dated September 27, 2008, prepared by Don Rosa, PLS of Randolph, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0, the Planning Board voted to take no action, but noted that the petitioner should be required to relocate their existing shed within their property boundaries.

### **FINDINGS**

The Board found that the proposed farmer's porch would be located too close to the street, and therefore substantially more detrimental to the neighborhood. The Board found that the proposed addition to the rear would encroach slightly further into the rear yard setback, but the Board noted that the further encroachment was de minimus and would not be substantially more detrimental to the neighborhood than the existing structure. The Board also found that petitioner had presented grounds for a hardship owing to the shape and size of the lot. Finally, the Board found that the relief requested could be granted, as it pertains to the rear addition, without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **DECISION**

On a motion made and seconded by Ms. Lauria, the Board voted unanimously to allow the petitioner to withdraw so much of their petition, as it pertains to the farmer's porch addition to the front of the house. On a motion made by Mr. Gauthier and seconded Ms. Lauria, the Board voted unanimously to grant the relief requested as it pertains to the rear addition, as shown on the plan submitted.

### **3) Petition Number 04-109B**

**St. Francis of Assisi**

**RE: 41-53 Independence Avenue**

Town Solicitor Carolyn Murray presented a narrative of changes to the plans from the initial submission of St. Francis of Assisi regarding the 40B project proposed at 41-53 Independence Avenue. Ms. Murray described the changes as being non-substantive, and as such not requiring a formal second hearing, but simply a ratification by the Board of the revised plans.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to accept the modifications, as shown on the plan submitted.

**4) Petition Number 08-58**

**UNIBRAINT, LLC**

**RE: 251 Union Street**

Present: Mike Gardner, applicant

This is a petition filed by UNIBRAINT, LLC of 251 Union Street, Braintree regarding the same property. The petitioner seeks to replace existing signage at this gas station to reflect the change in brand from Sunoco to Citgo. The property is located in a General Business Zoning District, as shown on Assessors' Map 1001, Plot 2, and contains 13,770 SF+/- of land.

**NOTICE**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and mailed to all parties of interest, a hearing was held before the Zoning Board of Appeals on December 17, 2008 at 7 p.m. at the DPW Administration Building, 90 Pond Street, in Braintree, MA. Sitting on this petition was chairman, Stephen Karll, and members, Jack Gauthier and Michelle Lauria.

**EVIDENCE**

The petitioner, represented by co-owner, Mike Gardner, of Eddie and Mike's Sunoco, explained to the Board that his gasoline station was switching from Sunoco to Citgo, and therefore, it was necessary to change the signage to reflect the change in brand, as well as to identify the business and to direct the public safely to the site. However, the proposed signage requires variances noted below:

1. The petitioner proposes to install one "Citgo" logo ground sign measuring 196 SF in area (both sides) and 53 ft. high, to be located at Location 1 as shown on the Site Plan. According to Section 135-904.5(A)(1)(a)(i) of the Zoning By-laws, in a General Business Zoning District, a ground sign containing the name of the business shall not exceed 60 SF and shall be no higher than 20 ft. above ground level. Therefore, a variance is needed from the height restriction as well as the area of the sign.
2. The petitioner proposes to install two price display signs at Locations 8 and 9 on the Site Plan, measuring 20.2 SF per sign face or 40.4 SF total. The signs will denote the price of gas for the regular blends as well as diesel. The price displays are to be attached to a ground sign at Location 2 on the Site Plan, with a height of approximately 17 feet, coming just below the 18 ft. high canopy. According to Section 135-904.5(A)(1)(b)(i) and (ii) of the Zoning By-laws, only

3. one sign is permitted to display the price of gasoline, and said sign is not to exceed 30 SF per face and shall be no lower than 10 Ft. in height. These price signs are also proposed to use red LED lights for the display. According to Section 135-905 of the Zoning By-laws, signs may  
  
only be illuminated with white interior lights. Therefore, a variance is needed to erect two price signs and to use the red LED display.
4. The petitioner proposes two canopy signs that measure 22 SF each for a total of 44 SF at Location 3 on the Site Plan. The canopy signs, combined with the ground sign for the price displays propose an additional 110.86 SF of signage at the site. According to Section 135-904.5(A)(1)(g) of the Zoning By-laws, the Board may permit any other signs attached to canopies, pumps, or coverings as the Board deems necessary to assist the public, provided such additional signage does not exceed 150 SF in the aggregate.

The petitioner presented a schematic plan entitled “proposed Sign Layout, Eddie and Mike’s Citgo, 251 Union Street, Braintree, MA”, with an accompanying “Site Plan”, as well as two color renderings of the proposed signs prepared by Zimmerman Sign Company.

No one else spoke in favor of or opposition to the petition. By a vote of 4-0, the Planning Board voted in favor of the requested relief, noting that the signage requested is consistent with similar businesses in Braintree.

### **FINDINGS**

The Board found that the petitioner had demonstrated a need for the requested signage, due to the brand change from Sunoco to Citgo. The Board also found that the requested signage was appropriate to the size and location of the site and that the signage was necessary to identify the location and to safely direct the traveling public to the site. Further, the Board found that the proposed signage would be comparable to existing signage at the site and consistent with signage approved for other similar establishments within the Town. Finally, the Board found that the requested relief could be granted without nullifying or substantially derogating from the intent and purpose of the Zoning By-laws.

### **DECISION**

On a motion made by Mr. Gauthier and seconded by Ms. Lauria, the Board voted unanimously to grant the relief requested, as shown on the plan submitted.

#### **5) Petition Number 08-57**

**Kevin Fay**

**RE: 21 Thayer Road**

Present: Kevin Fay, applicant

Kevin Fay of 21 Thayer Road seeks relief from Zoning By-laws Chapter 135, Sections 403, 407, and 701 to enclose a porch at the same property. The lot and structure are pre-existing nonconforming. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3004, Plot 22A and contains 7,923 SF +/- of land.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on December 17, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond

Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, John Gauthier and Michelle Lauria.

### **Evidence**

The petitioner, representing himself, explained to the Board that he is seeking permission to enclose a U-shaped porch that is carved into the rear of his dwelling. The porch would be enclosed and squared off to be flush with the rear of the existing dwelling. The petitioner's lot is undersized, offering 7,923 SF where 15,000 SF are required for a Residence B District, and the lot is only 81 feet wide, as opposed to the 100 ft. width required. The petitioner's dwelling is also pre-existing, nonconforming, as the structure encroaches into the rear yard setback; the existing garage is located 22.4 feet off the rear property line, where the Zoning By-law requires a 30 ft. setback. The enclosed porch will be located 25.3 feet off the rear lot line, so the alteration to the structure will not create any new nonconformities.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Mass.", dated October 6, 2008, prepared by C.S. Kelley, PLS of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 in favor of the requested relief.

### **Findings**

The Board found that the petitioner's proposed alteration to his pre-existing nonconforming dwelling was de minimus and did not create any new nonconformities. The Board concluded that the proposed alteration would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **Decision**

On a motion made by Mr. Gauthier and seconded by Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

#### **6) Petition Number 08-59**

**Metro PCS**

**RE: 35 Roc Sam Park**

Mr. Forsberg advised the Board that the applicant is requesting a withdrawal of the petition.

On a motion made by Mr. Gauthier and seconded by Ms. Lauria, the Board voted unanimously to accept the request to withdraw the petition.

#### **7) Petition Number 08-60**

**Edward Zebowsky**

**RE: 20 Mill Lane**

Mr. Forsberg advised the Board that the petitioner requested an extension of this petition until the January 27, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Ms. Lauria, the Board voted unanimously to extend the petition to January 27, 2009.

**OLD BUSINESS:**

On a motion made by Mr. Gauthier, and seconded by Ms. Lauria, the Board voted to approve the meeting minutes of October 28, 2008 and November 25, 2008.

The meeting adjourned at 8:05pm.